



## ANALYSIS OF HB 5054

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### ISSUE

Preliminary bill analysis of [HB 5054](#) - An Act Protecting Victims of Domestic Violence.

### SUMMARY

This bill makes changes in various laws that relate to orders of protection (see BACKGROUND), service of process, and firearms and ammunition possession.

With regard to the service of civil restraining orders, among other things, the bill:

1. revises the civil restraining order application form to allow an applicant to indicate whether the respondent (accused) has a firearm eligibility certificate, an ammunition certificate, or a job in which the ability to carry a firearm is an essential requirement;
2. allows the court, in cases where the respondent has such a job need, to consider the circumstances and order a hearing as soon as practicable but within 14 days after the application date;
3. reduces, from five to three, the number of days before a hearing date that process must be served;
4. requires a proper officer (i.e., person authorized to serve process), in certain circumstances, to request that a state or municipal police officer be present when service is executed; and
5. continues an ex parte order (i.e., an order issued without a hearing) beyond the initial hearing date under certain circumstances.

The bill also requires state marshals and other proper officers to enter specific service-related information in the Judicial Branch's Internet-based service tracking system (see BACKGROUND).

The bill requires the Judicial Branch to (1) revise and simplify the restraining order application process; (2) allocate space in the court, where feasible, for meetings between state marshals and restraining order applicants; and (3) annually collect restraining and protection order data.

It expands the state marshal commission's existing authority to adopt rules to conduct its internal affairs.

The bill extends certain firearms and ammunition prohibitions to a person subject to a civil restraining or protection order issued without a hearing (ex parte) in a case involving physical force. It expressly prohibits the Department of Emergency Services and Public Protection (DESPP) commissioner from issuing a gun permit or firearms eligibility certificate to anyone subject to such an order. It also requires the commissioner, upon the (1) request of a person who was subject to such an order and (2) verification of the order's expiration, to reinstate any gun permit, firearms eligibility certificate, or ammunition certificate revoked as a result of such an order, if the person is otherwise eligible for the credential.

It makes a person ineligible to possess firearms or ammunition when he or she receives legal notice that he or she is subject to an ex parte order and makes it a class C felony for such a person to violate the firearms or ammunition transfer, delivery, or surrender requirements, as is already the case for anyone subject to any other order of protection.

The bill also shortens, from two business days to 24 hours, the time within which a person who becomes subject to any type of order of protection in a case involving physical force must transfer, deliver, or surrender his or her firearms and ammunition. It sets the same 24-hour deadline for a person subject to an ex parte order. It (1) adds the municipal police department, instead of just the State Police, as an option to receive the delivery or surrender of firearms and ammunition by those who are required to do so; (2) requires the DESPP commissioner to update the existing protocol to allow for such a surrender; and (3) requires DESPP and law enforcement agencies, under certain circumstances, to return firearms and ammunition when an ex parte order expires.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2016

## **§ 3 — CIVIL RESTRAINING ORDERS**

### ***Application***

Under current law, a civil restraining order application form must allow an applicant, at his or her option, to indicate whether the respondent holds a gun permit or possesses firearms or ammunition. Under the bill, the application form must also give the applicant the option to indicate whether the respondent has a (1) handgun eligibility certificate, long gun eligibility certificate, or an ammunition certificate and (2) job in which the ability to carry a firearm is an essential requirement.

### ***Initial Hearing Date***

Under existing law, the court must hold a hearing within 14 days after receipt of a restraining order application. If an application indicates that the ability to carry a firearm is an essential requirement of the respondent's job, the bill allows the court to consider such circumstances and order a hearing as soon as practicable but within 14 days after the application date.

The bill reduces, from five to three, the number of days before a hearing date by which a respondent must receive notice of a hearing and any ex parte order.

### ***Second Hearing Date and Ex Parte Order Extension***

Under current law, an ex parte order is in effect until the hearing date, 14 days from the date of the order. The bill requires the court to continue an ex parte order for no more than 14 days from the original hearing date, if the (1) respondent has not been served by the date of the hearing and (2) the applicant requests the extension. The court must do so based on the information in the original application.

Under the bill, the court must prepare a new hearing and notice order containing the new hearing date. The respondent must be served with this new order at least three days before the new hearing date.

### ***Service of Process***

If the court issues an ex parte order on an application that indicates that the respondent (1) holds a gun permit, a handgun eligibility certificate, long gun eligibility certificate, or an ammunition certificate; or (2) possesses ammunition or one or more firearms, the bill requires the proper officer to:

1. notify the law enforcement agency or agencies for the town in which the respondent will be served of the time and place of service;

2. send, fax, or deliver by other means, a copy of the application, applicant's affidavit, ex parte order, and hearing notice to the agency or agencies; and
3. request that a state or municipal police officer be present when service is executed.

Under the bill, "law enforcement agency" means the State Police or any municipal police department.

### **§§ 3 & 6 — SERVICE TRACKING**

The bill requires state marshals and other proper officers, as soon as possible within two hours after serving a civil restraining or protection order, to enter the date, time, and method of service into the Judicial Branch's Internet-based service tracking system. Under the bill, if the respondent was not served before the date of the scheduled hearing, the proper officer must indicate in the system that service was unsuccessful.

### **§ 6 — COPY OF ORDER TO DESPP**

Existing law requires the court to send, by fax or other means, a copy of any civil restraining or protection order (including any ex parte order) or the information in such order to the law enforcement agency or agencies for the towns where the applicant and respondent reside and where the respondent works, within 48 hours of issuing the order. Under the bill, the court must also send such a copy or information to the DESPP commissioner immediately after issuing an order.

### **§§ 4 & 5 — JUDICIAL BRANCH'S COURT SPACE AND APPLICATION PROCESS**

#### ***Civil Restraining Order***

In each Superior Court where service of a restraining order may be returned, the bill requires the chief court administrator, where feasible, to allocate space for a meeting between a state marshal and a restraining order applicant.

The bill also requires the chief court administrator to revise and simplify the process for filing a restraining order application. Under the bill, the chief court administrator must ensure that anyone seeking to apply for relief from abuse is given a one-page, plain language explanation of how to apply for a civil restraining order. By law, a person must be a family or household member to seek relief under a civil restraining order. A non-household or non-family member may only apply for a civil protection order.

The above provisions do not apply to civil protection order applicants or that application process.

### ***Civil Restraining and Civil Protection Orders***

Under the bill, the chief court administrator must also collect data annually on the:

1. number of restraining and protection orders issued,
2. number of these orders that are not picked up from the court by an applicant,
3. method used when service of these orders was successful,
4. number of requests for a police officer to be present at the time process is served, and
5. number of orders that expired or were dismissed because the respondent could not be served.

## **§ 2 — STATE MARSHAL COMMISSION REGULATIONS**

Under current law, the state marshal commission may adopt rules it deems necessary to conduct its internal affairs. The bill requires, rather than allows, the commission to adopt these rules and specifies that they provide for:

1. timely, consistent, and reliable access to a state marshal for civil restraining order applicants (but not for civil protection order applicants);
2. services to people with limited English proficiency or who are deaf or hearing impaired; and
3. service of process using a clear and accurate copy of the original document.

## **§ 7 — ELIGIBILITY TO POSSESS FIREARMS AND AMMUNITION**

Under existing law, a person is ineligible to possess firearms and ammunition when the court issues a civil restraining or protection order against him or her after notice and a hearing in a case involving the use, attempted use, or threatened use of physical force against another person.

Under the bill, in the same type of case, if the court issues an ex parte order, the respondent becomes ineligible to possess firearms and ammunition when he or she receives notice of the order.

## **§§ 7 AND 15 – 16 — TRANSFER, DELIVERY, OR SURRENDER OF FIREARMS AND AMMUNITION**

### ***§ 7—Time Frame to Transfer, Deliver, or Surrender***

The bill shortens the time period within which a person must transfer, deliver, or surrender his or her firearms and ammunition if he or she becomes ineligible to possess them as a result of becoming subject to a civil restraining order, civil protection order, criminal protective order, or foreign order of protection. It also sets the shortened deadline for ex parte orders.

Under current law, the deadline is within two business days after the person becomes ineligible. Under the bill, the deadline is within 24 hours of becoming ineligible, including after receiving notice of an ex parte order.

### ***§ 7—Delivery or Surrender to Police Department***

The bill adds the municipal police department, instead of just the State Police, as an option to receive the delivery or surrender of firearms and ammunition by those who are required to do so.

It requires such police department, as is currently the case for the DESPP commissioner, to exercise due care when receiving and holding the weapons.

Under existing law, a person or his or her legal representative may, up to one year after delivery or surrender of his or her firearms or ammunition to DESPP, ask the commissioner to transfer them to an eligible person. By law, the commissioner must do so within 10 days of receiving the request (except in a case involving a protection order, weapons may only be transferred to a federally licensed dealer pursuant to a sale). Under the bill, the same may be asked of police departments.

By law, the commissioner must destroy any firearms or ammunition that have not been transferred by the end of one year. Under the bill, this also applies to police departments to which weapons are delivered or surrendered.

### ***§§ 7 and 15 – 16 — Violation***

Existing law requires a person who becomes ineligible to possess firearms or ammunition because he or she is subject to an order of protection to (1) transfer his or her firearms or ammunition to a federally licensed firearms dealer pursuant to a sale or (2) deliver or surrender such firearms and ammunition to the DESPP commissioner. Under the bill, a person who is ineligible as a result of an ex parte order who violates the transfer, delivery, or surrender requirement is guilty of criminal possession of a firearm, as is the case under existing law for violators subject to other orders of protection.

By law, criminal possession of a firearm is a class C felony, punishable by up to 10 years in prison with a two-year mandatory minimum, a fine of up to \$10,000, or both.

## **§§ 8 – 14 — ISSUE, REVOCATION, AND REINSTATEMENT OF GUN AND AMMUNITION CREDENTIALS**

The bill expressly states that the DESPP commissioner must not issue a gun permit, handgun eligibility certificate, or long gun eligibility certificate to anyone subject to an ex parte order issued in a case involving the use, attempted use, or threatened use of physical force against another person. By law, the commissioner may revoke a permit or certificate for any event that would have disqualified the holder from being issued such credential.

Under the bill, if DESPP revokes a gun permit, handgun eligibility certificate, long gun eligibility certificate, or ammunition certificate based on an ex parte order, DESPP must reinstate it if the order expires and:

1. the respondent, who is not otherwise disqualified, notifies the department of the expiration and
2. DESPP verifies the expiration.

## **§ 17 — PROTOCOL FOR GUN AND AMMUNITION TRANSFER, DELIVERY, OR SURRENDER**

The law requires the DESPP commissioner, in conjunction with the chief state's attorney and the Connecticut Police Chiefs Association, to develop a protocol to ensure that people who become ineligible to possess firearms transfer, deliver, or surrender them as appropriate. The bill requires the commissioner to update the protocol to appropriately apply to situations where a person is subject to an ex parte order.

### **BACKGROUND**

#### ***Orders of Protection***

***Civil Restraining Order.*** A family or household member may apply for a civil restraining order for relief from physical abuse, stalking, or a pattern of threatening from another family or household member ([CGS § 46b-15](#)).

***Civil Protection Order.*** A victim of sexual abuse, sexual assault, or stalking may apply for a civil protection order if he or she is not eligible for the restraining order described above ([CGS § 46b-16a](#)).

***Criminal Protective Orders.*** Courts may issue a (1) protective order after a person is arrested for certain crimes or (2) standing criminal protective order after a person is convicted of certain crimes. The statutes governing these orders do not require a victim to apply for the order (CGS §§ [54-1k](#) and [53a-40e](#)).

***Foreign Order of Protection.*** A foreign order of protection is an injunction or other court order to prevent violence, threatening acts, or harassment against; contact or communication with; or physical proximity to another person issued by another state; the District of Columbia; a U. S. commonwealth, territory, or possession; or an Indian tribe in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection ([CGS § 46b-15a](#) and [18 USC § 2266\(5\)](#)).

### ***Judicial Branch's Service Tracking System***

The Judicial Branch's Protective Order Registry's tracking component enables state marshals to record the service of process in civil restraining order cases. This component uses an around-the-clock, toll-free voice recognition system that marshals can access by cell phone, and the system updates state and national protection order files and faxes a notice of service to corresponding police departments, as soon as service information is recorded.

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